

Docket No.: 7042-11

**Remarks**

The foregoing proposed amendment presents amended claim 1. As a result of this Amendment, claims 1-4 and 6-20 remain in the application. Claim 5 was previously cancelled.

Regarding Kolls, U.S. Patent No. 6,389,337 ("Kolls"), one of ordinary skill in the art at the time of the present invention would not have known of the teaching in Kolls since Kolls issued on May 14, 2002 and the present invention was filed on November 27, 2001. Furthermore, it would appear to be the improper use of hindsight to attempt to use the Applicant's own technology as described in the Applicant's background section in attempt to obviate the present invention. Furthermore, although XM radio does happen to use selective call addressing in the sense that authorized radios are enabled to decode a received signal, there is no teaching or suggestion of group addressing in the background or in the cited references of a digital audio receiver that selectively decodes messages dynamically based on a selective call address and at least one environmental input that includes vehicle health conditions as recited in the amended claims.

The TDMA signaling in XM radio does not use a particular time slot for a particular selective call address as in paging. Instead, the TDMA signaling is used to provide the separate channels or "radio stations" that are decoded selectively by the user at the receiver. As stated in the background, "Each RF carrier supports up to 50 channels of music or data in Time Division Multiplex (TDM) format." Each time divided multiplexed channel carries a separate radio station to provide the numerous channels to each of the subscribers on the system. The TDMA signaling in this regard is static and not dynamic and does not change with environmental conditions.

Once again, we submit that Kolls fails to obviate or anticipate the claims as amended. Although it appears that in Kolls, reference is made to a wireless data link 276 that could potentially use a satellite receiver and to certain vehicle monitor and metering means having an interface 260 that can include an accelerometer 262, a tachometer 264 and an odometer 266, these elements are not used as claimed. They are not measuring the vehicle health conditions recited in the claims as amended. Kolls also includes advertisement selection using GPS, user's listening history or using cookies using user's specific data such as a user's buying habits and listening habits. Although Kolls specifically mentions an accelerometer, a tachometer, and an

Docket No.: 7042-11

odometer, Kolls clearly fails to suggest, mention or contemplate the use of these "vehicle health" or environmental inputs as recited in the Applicant's amended claims to serve as criteria in the selection of messages as now claimed in the present invention.

Furthermore, the Examiner appears to equate the electronic cookie in Kolls with a group address. There is a structural difference between an electronic cookie and a group address, particularly a dynamic group address as recited in the claims. The Examiner must show how these two items are the same and there is no indication in the references or otherwise demonstrating that a cookie in the context of Koll is the same as the dynamic group address in the claimed invention. The cookies in Kolls appear to be "left behind" as a result of visits to websites by the user or possibly other user habits. Addresses (or the ability to decode messages) in Kolls are not dynamically changed or modified based on the data obtained from the plurality of environmental inputs as specified in the claims. Kolls fails to suggest, mention or contemplate the use of one environmental input received (such as vehicle health status specific environmental inputs) to create a modified group address and where a processor further compares the modified group address with a received group address associated with one of a plurality of content specific messages as recited in claim 14. Nor does Koll suggest or teach the use of a processor to compare a received group address from one of a plurality of content specific messages with an address in a current group address table that is updated with group addresses from a comprehensive group address table based on the environmental inputs received at the digital receiver unit as recited in claim 16. Thus, the Applicant once again respectfully believes claims 1-4 and 6-20 overcome the rejections based on 35 USC Section 103(a) as being unpatentable over Kolls in view of Montegi for the reasons stated above.

Although the Examiner does not explicitly state that he is taking official notice that a cookie is equivalent to a dynamic group address, this is nonetheless what he is doing in his assertion in applying Kolls to the claimed invention. In such an instance, Section 2144.03 of the MPEP states that to adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.

Thus, the Applicant believes we are adequately traversing the examiner's assertion of official notice in this regard and that the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained based on Cookies being equivalent to a

Docket No.: 7042-11

dynamic group address. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2).


A reply is being filed herein within two months of the mailing date of the final action. Thus, any mailing after the end of the 3 month shortened statutory period will expire on the date the advisory action is mailed.

U.S. Patent Publication 2001/0027111 to Montegi et al. (hereinafter "Montegi") discusses a group communication system for mobile terminals. Montegi fails to disclose the use of a digital audio receiver (or a satellite digital audio receiver) that uses the following vehicle health conditions: odometer reading, temperature reading, temperature reading, tire pressure reading, a coolant level, an air bag deployment status, an ABS break status, or an engine status. Nor does the mobile terminal in Montegi appear to selectively decode messages dynamically based on a selective call address and at least one of these vehicle health conditions at a digital audio receiver. Montegi certainly fails to teach a digital audio radio, let alone a satellite digital audio receiver as claimed in claims 12 and 18. Thus, the Applicant respectfully believes claims 1-4 and 6-20 overcome the rejections based on 35 USC Section 103(a) as being unpatentable over Kolls in view of Montegi.

An indication of allowability is respectfully requested. Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below listed telephone number.

Respectfully submitted,

Feb. 14, 2005  
Date

  
Pablo Meles  
Registration No. 33,739  
Akerman Senterfitt  
222 Lakeview Avenue, Suite 400  
P.O. Box 3188  
West Palm Beach, FL 33402-3188  
Tel: 954-463-2700